



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 20, 2018

Return Receipt Requested

Certified Mail #: (b) (6) Privacy

In Reply Refer to:

EPA File No: 05R-18-R9

Naomi Kelly
City Administrator
Office of the City Administrator
City and County of San Francisco
City Hall, Room 362
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Return Receipt Requested

Certified Mail #: (b) (6) Privacy

In Reply Refer to:

EPA File No: 06R-18-R9

Barbara Lee
Director
California Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Return Receipt Requested

Certified Mail #: (b) (6) Privacy

In Reply Refer to:

EPA File No: 07R-18-R9

Felicia Marcus
Chair
California Water Resources Control Board
1515 Clay Street
Suite 1400
Oakland, CA 94612

Re: Rejection and Closure of Administrative Complaints

Dear Mss. Kelly, Lee and Marcus:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is rejecting for investigation the above captioned complaints filed under Title VI of the of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation (40 C.F.R. Part 7) against the City and County of San Francisco

(the City), the California Department of Toxic Substances Control (DTSC), and the California Water Resources Control Board (Water Board).¹ The complaints relate to the ongoing cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at the Hunters Point Naval Shipyard (Hunter's Point). The complaints allege that the City, DTSC, and the Water Board discriminated on the basis of race against the neighboring, predominantly African-American, community by failing to notify them about adverse impacts from ongoing exposure to toxins, including radioactive substances at the Hunter's Point site and about the falsified reports of the contractor Tetra Tech on the cleanup of Hunter's Point.² The Complainants also allege that there is a continuing and/or imminent violation of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA). After careful review, ECRCO has determined that it will not accept these complaints for investigation. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In general, ECRCO will accept, reject, or refer a complaint after considering the four fundamental jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint on this basis.³ After conducting a preliminary review of the available information, that is, the Complainant's description of the alleged discriminatory acts, the facts that were presented, and other considerations noted below regarding the actions taken by the federal, state and local agencies, ECRCO has determined that it will not accept the complaints for investigation.

ECRCO's preliminary review determined that, for purposes of historical background, the 866-acre Treasure Island Naval Station-Hunters Point Annex, also known as Hunters Point Naval Shipyard (HPNS) site is located in the southeastern portion of the City of San Francisco,

¹On October 9, 2018, ECRCO rejected the complaint against Tetra Tech, Inc., because that entity is not a recipient of financial assistance from EPA and, thus, EPA lacks jurisdiction over that entity.

² The complaints also allege discrimination on the basis of income. However, ECRCO lacks jurisdiction to investigate this issue because income is not a basis protected under 40 CFR Parts 5 and 7.

³ *See* ECRCO's *Case Resolution Manual*, Section 2.6 pp. 12-13. https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

California, and is adjacent to the San Francisco Bay.⁴ The HPNS “was home to a shipyard from 1945 to 1974 and the Naval Radiological Defense Laboratory (NRDL) from 1948 to 1960.”⁵ The activities performed by the Laboratory “contaminated soil, dust, sediments, surface water and groundwater with petroleum fuels, pesticides, heavy metals, polychlorinated biphenyls (PCBs), volatile organic compounds (VOCs) and radionuclides.”⁶ The site was closed in 1974, but in 1976 Triple A Machine Shop, Inc. leased the area until 1986.⁷ Because of contamination, “HPNS was added to the National Priorities List (NPL) in 1989 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)” and “since 1988, the Navy conducted hundreds of studies, excavations, and groundwater treatment actions as the Shipyard cleanup progressed.”⁸

ECRCO’s preliminary review also has determined that the CERCLA and the site’s Federal Facility Agreement both establish the United States Navy as the lead agency on the clean-up of Hunters Point with the EPA and the State of California in oversight roles.⁹ Furthermore, the Agreement assigns responsibility for keeping the community informed of the radiological cleanup to the Navy.¹⁰ From January 2016 to December 2018, the Navy hosted a total of ten community meetings and presented at nine established Bayview-Hunters Point public forums. Of the ten Navy-hosted meetings, four were organized to provide updates to the community on the radiological investigation. The nine Navy presentations at established public forums also provided updates on the radiological investigation. Enclosed is a summary of the Navy’s radiological public outreach, which includes the aforementioned meetings and additional extensive methods used to encourage public involvement. EPA and the State of California attended all outreach events to answer questions and share additional information when necessary. Thus, the allegation that the Hunters Point community has not been notified of concerns about Tetra Tech data and about evaluation of potential adverse impacts is not grounded in fact.

The complaints also allege that the City, DTSC, and the Water Board continue to violate the EPCRA. ECRCO is not the appropriate office to address this allegation as ECRCO has no jurisdiction under EPCRA. We have shared the EPCRA complaints with EPA’s Office of Emergency Management.

⁴ Fact Sheet Third Five-Year Review of Remedial Actions (January 2014)
https://www.bracpmo.navy.mil/content/dam/bracpmo/california/former_naval_shipyard_hunters_point/pdfs/all_documents/environmental_documents/basewide/hps_201401_factsheet_5yr.pdf

⁵ Treasure Island Naval Station-Hunters Point Annex: Background
<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0902722#bkground>

⁶ Id.

⁷ Fact Sheet Third Five-Year Review of Remedial Actions (January 2014)
https://www.bracpmo.navy.mil/content/dam/bracpmo/california/former_naval_shipyard_hunters_point/pdfs/all_documents/environmental_documents/basewide/hps_201401_factsheet_5yr.pdf

⁸ Id.

⁹ Treasure Island Naval Station-Hunters Point Annex: Background
<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0902722#bkground>

¹⁰ https://www.navfac.navy.mil/niris/SOUTHWEST/HUNTERS_POINT_NS/N00217_005218.PDF

Ms. Naomi Kelly
Ms. Barbara Lee
Ms. Felicia Marcus

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For the reasons discussed above, ECRCO has determined that an investigation in this case is not justified. Accordingly, this matter is closed as of the date of this letter. If you have any questions, please contact Dale Rhines, Deputy Director, at (202) 564-4174, by email at Rhines.Dale@epa.gov or by mail at 1200 Pennsylvania Avenue, NW, (Mail Code 2310A), Washington, DC 20450-1000.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 9